

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GERMAINE BROWN,

Petitioner,

v.

ORDER
08-CV-740S

MICHAEL GIAMBRUNO,

Respondent.

1. On October 6, 2008, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254.

2. On January 12, 2009, this Court referred this matter to the Honorable Hugh B. Scott, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law, and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation filed on January 7, 2010, Judge Scott recommended that Petitioner's Petition for a Writ of Habeas Corpus be denied. On January 21 and February 11, 2010, Petitioner filed Objections to Judge Scott's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has thoroughly reviewed Judge Scott's Report and Recommendation, Petitioner's Objections thereto and the applicable law. Upon due consideration, this Court finds no legal or factual error in Judge Scott's Report and Recommendation. Accordingly, Petitioner's Objections are denied and this Court will accept the Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's January 7, 2010 Report and Recommendation (Docket No. 10) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Objections (Docket Nos. 12 and 14) are DENIED.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DENIED for the reasons set forth in the Report and Recommendation.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: May 27, 2010
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Judge